

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

PP Docket No. 93-253

COMMENTS OF  
TELEPHONE ELECTRONICS CORPORATION

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## **TABLE OF CONTENTS**

<b>SUMMARY . . . . .</b>	<b>i</b>
<b>I. PROCEDURAL HISTORY . . . . .</b>	<b>1</b>
<b>II. TELEPHONE ELECTRONICS CORPORATION . . . . .</b>	<b>4</b>
<b>III. THE COMMISSION SHOULD SET ASIDE CHANNELS C AND D FOR BIDDING BY RURAL TELEPHONE COMPANIES AND SMALL BUSINESSES . . . . .</b>	<b>5</b>
<b>A. The Commission has the Legal Authority to Set     Aside Channels C and D for Rural Telephone     Companies and Small Businesses . . . . .</b>	<b>6</b>
<b>B. The Commission's Definitions of Who Qualifies     for Set-Aside Channels Should Reflect the     Realities of Rural Areas and Small Businesses . . .</b>	<b>9</b>
<b>1. Rural Telephone Companies Operate         Exchanges Serving Fewer than 10,000         Persons . . . . .</b>	<b>10</b>
<b>2. Small Telephone Companies Should be         Defined in the Context of the         Telecommunications Industry . . . . .</b>	<b>14</b>
<b>IV. THE COMMISSION SHOULD PERMIT RURAL TELEPHONE OR SMALL BUSINESS HOLDING COMPANIES TO BID ON CHANNELS C AND D TOGETHER AND TO AGGREGATE SPECTRUM . . . . .</b>	<b>15</b>
<b>CONCLUSION . . . . .</b>	<b>19</b>

## SUMMARY

Telephone Electronics Corporation ("TEC") hereby submits its comments on competitive bidding for personal communications services ("PCS") licenses. TEC is a Mississippi holding company for, among other entities, six rural small independent local exchange carriers in Tennessee, Alabama and Mississippi.

TEC agrees that the Commission should set aside Channel Blocks C and D for bidding by small businesses, rural telephone companies or businesses owned by women or minorities. The Commission has the legal authority to foster the interests of small businesses and rural telephone companies as a class. Indeed, Congress intended these designated entities to participate in the provision of PCS, and only by ensuring that some of them receive licenses may this goal be achieved.

TEC respectfully requests that in defining what constitutes a rural or small telephone company, the Commission employ appropriate definitions. The Commission's proposal to define rural telephone companies in terms of cable service excludes too many telephone companies that are rural service providers. A better definition is one that the Commission already has under consideration. Rural telephone companies are companies whose local exchanges serve places with populations of 10,000 or fewer persons. Likewise, small telephone companies should be defined under existing Commission rules as those with 50,000 or fewer access lines and annual revenues from regulated telecommunications operations of less than \$40 million. Alternatively, the Small Business Administration definition of a small communications provider as one with under 1,500 employees is also reasonable.

TEC also recommends that the Commission permit holding companies that include rural or small telephone companies to bid upon Channel Blocks C and D, and that they be allowed to bid for both Channels in a single bid. Holding companies, such as TEC, that include small or rural telephone companies have been formed to attract capital and offer the economies of scale necessary for success. Likewise, small and rural telephone companies should be allowed to bid upon both Channels C and D in a single bid in order to obtain the 30 MHz necessary for economically and technically viable PCS. If rural or small telephone companies are forced to bid on these channels separately, they may find themselves with inadequate amounts of spectrum for proper PCS provisioning.

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COMMENTS OF  
TELEPHONE ELECTRONICS CORPORATION, INC.

Telephone Electronics Corporation ("TEC"), by its attorneys and pursuant to Section 1.415(b) of the Commission's rules, respectfully submits comments as requested by the Commission in its Notice of Proposed Rulemaking ("NPRM") released October 12, 1993, in the above-captioned proceeding.<sup>1</sup>

I. PROCEDURAL HISTORY

On September 23, 1993, the Commission announced the authorization of new personal communication services ("PCS") in the 2 GHz emerging technologies band.<sup>2</sup> Personal communications services are wireless telecommunications services designed to allow a customer to communicate via a special handset regardless of where the customer is located. PCS will allow transmission of voice, data and video communications services, and is expected to launch the next era in mobile telecommunications services.

<sup>1</sup> Notice of Proposed Rulemaking, Implementation of Section 309(i) of the Communications Act Competitive Bidding, PP Docket No. 93-253, FCC 93-455, 8 FCC Rcd \_\_\_\_\_ (released October 12, 1993).

<sup>2</sup> Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd \_\_\_\_\_ (released October 22, 1993) (hereinafter referred to as the "PCS Order").

The Commission divided license allocations into channel blocks of 10, 20 and 30 MHz of spectrum, divided by the Rand McNally major trading areas ("MTAs") and basic trading areas ("BTAs"). The divisions are as follows:

<u>Channel Block</u>		<u>Frequency (MHz)</u>	<u>Service Area</u>
A	(30 MHz)	1850-1865/1930-1945	MTA
B	(30 MHz)	1865-1880/1945-1960	MTA
C	(20 MHz)	1880-1890/1960-1970	BTA
D	(10 MHz)	2130-2135/2180-2185	BTA
E	(10 MHz)	2135-2140/2185-2190	BTA
F	(10 MHz)	2140-2145/2190-2195	BTA
G	(10 MHz)	2145-2150/2195-2200	BTA <sup>3</sup>

The Commission will allow licensees to aggregate these blocks in groups of up to 40 MHz in any one service area, but without geographic limitation for market aggregation. It may or may not be technically feasible to aggregate blocks operating on different frequencies. A licensee will be required to offer personal communications services to at least one-third of the population in each market area within five years of receiving its license, to two-thirds of the population in each market area within seven years of being licensed and to ninety percent within ten years.

In its NPRM, the Commission requested comments on how applicants should bid for licenses in the personal communications services markets, how to accord preferences to designated entities such as small businesses, rural telephone companies and businesses owned by women or minorities, and for comments on permitting group bidding.

As far as combination bidding is concerned, the Commission plans to accept bids both for licenses individually and for all the

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<sup>3</sup> PCS Order, at ¶ 56.

geographic licenses in the block. Group bids would be submitted as sealed bids, and then individual license auctions would be conducted orally. Sealed group bids would be opened after the oral auction. If the sum of the individual bids are greater than the highest bid for the group, licenses would be awarded individually.

The Commission proposed to permit group bidding to award all of the 51 MTA licenses on each of two 30 MHz spectrum blocks A and B. The Commission requested comment on whether it should accept sealed group bids for all BTA licenses on an MTA basis and conduct an oral auction sequentially for individual BTA licenses. The Commission will also consider in this rulemaking proceeding whether group bidding should be permitted to aggregate 10 MHz PCS licenses in 20 MHz or 30 MHz blocks.

The Commission seeks comment on setting aside blocks of spectrum for competitive bidding by small businesses, rural telephone companies, and businesses owned by women or minorities, and is also seeking comment on how such businesses are to be defined.<sup>4</sup> In order to ensure that small businesses, rural telephone companies, and businesses owned by women or minorities have an opportunity to compete, the Commission will consider whether it should set aside Block C, a 20 MHz BTA block, and Block D, a 10 MHz BTA block, for these designated entities. The Commission also proposed that qualifying bidders for the 20 MHz block be allowed to pay for their licenses over time, and that their qualifying deposit be less than that required by entities

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<sup>4</sup> NPRM, at ¶ 121.

that are not small businesses, rural telephone companies, or businesses owned by women or minorities.<sup>5</sup>

## II. TELEPHONE ELECTRONICS CORPORATION

Telephone Electronics Corporation is a Mississippi holding company for, among other entities, six small independent local exchange carriers in Tennessee, Alabama and Mississippi. These local exchange carriers are Bay Springs Telephone Company, Inc., in Bay Springs, Mississippi, Crockett Telephone Company in Friendship, Tennessee, National Telephone Company of Alabama in Cherokee, Alabama, Peoples Telephone Company in Erin, Tennessee, Roanoke Telephone Company in Roanoke, Alabama, and West Tennessee Telephone Company in Bradford, Tennessee.

Bay Springs Telephone Company serves 9,658 access lines and fourteen rural communities in Mississippi. It serves the communities of Bay Springs (population: 1,729), Big Creek (population: 129), Homewood (population: 70), Louin (population: 289), Old Taylorsville (population: no figures available), Pittman (population: no figures available), Polkville (population: 129), Rose Hill (population: 250), SoSo (population: 366), Sylvarena (population: 110), Walters (population: 150), White Oak (population: no figures available), Mont Rose (population: 106) and Paulding (population: 200).<sup>6</sup> It is believed that Old Taylorsville, Pittman and White Oak have populations of under one hundred persons.

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<sup>5</sup> Id.

<sup>6</sup> Population figures are obtained from the Rand McNally 1993 Commercial Atlas and Marketing Guide, 392-395, 123rd Edition.



Crockett Telephone Company serves 3,923 access lines. Crockett operates three Tennessee exchanges in Friendship (population: 467), Alamo (population: 2,426) and Maury City (population: 782).

National Telephone Company of Alabama is located in Cherokee, Alabama. It serves 1,983 access lines and three Alabama exchanges in Cherokee (population: 1,479), Margerum (population: 50) and Barton (population: 150).

Peoples Telephone Company operates 3,593 access lines and three exchanges in Tennessee serving Erin (population: 1,586), Tennessee Ridge (population: 1,271), and Henry (population: 317).

Roanoke Telephone Company is located in Roanoke, Alabama, and operates 4,302 access lines and four exchanges. It serves the towns of Roanoke (population: 6,362), Rockmills (population: 650) and Rock Stand (population: no figures available) in Randolph County, and Clackville (population: no figures available) and Standing Rock (population: 150) in Chambers County.<sup>7</sup>

West Tennessee Telephone Company serves 4,007 access lines. West Tennessee operates four Tennessee exchanges in Bradford (population: 1,154), Trezevant (population: 874), Atwood (population: 1,066) and Rutherford (population: 1,303).

### III. THE COMMISSION SHOULD SET ASIDE CHANNELS C AND D FOR BIDDING BY RURAL TELEPHONE COMPANIES AND SMALL BUSINESSES

The Commission proposes to set aside Channel Block C<sup>8</sup> and Channel Block D for bidding by designated entities composed of

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<sup>7</sup> 1993 Commercial Atlas and Marketing Guide, 251-252.

<sup>8</sup> TEC plans to request reconsideration in Gen. Docket 90-314 of the size of the set-aside. Channel C requires 30 MHz in order for PCS to be economically and technically viable.

small businesses, rural telephone companies or businesses owned by women or minorities.<sup>9</sup> The Commission proposes to allow the designated entities to use installment payment plans, with interest, for bids within the set-aside blocks.<sup>10</sup> The FCC seeks comment on this proposal, on whether to allow the installment plan preference to be used by designated entities who bid upon channel blocks that are not set aside for the designated entities exclusively and whether to provide tax certificates to designated entities, without regard to the channel block on which they bid.<sup>11</sup>

TEC agrees that the Commission should set aside at least 30 MHz of spectrum for qualifying applicants who fit the appropriate definitions. This would allow small businesses, rural telephone companies, and businesses owned by women or minorities to proceed on more of an equal footing against those obtaining not only an MTA's worth of coverage but 30 MHz of spectrum. Not only is 30 MHz required for purposes of fairness, but 30 MHz is required to ensure efficient, economical seamless service.

A. The Commission has the Legal Authority to Set  
Aside Channels C and D for Rural Telephone  
Companies and Small Businesses

Section 309(j) of the Communications Act, as recently enacted by Congress, mandates that in determining eligibility for licenses, the Commission shall promote the following objectives:

promoting economic opportunity and competition  
and ensuring that new and innovative  
technologies are readily accessible to the

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<sup>9</sup> NPRM, at ¶ 121.

<sup>10</sup> Id.

<sup>11</sup> Id.

American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;....<sup>12</sup>

To this end, the Commission proposes to set aside two channel blocks of spectrum nationwide, one of 20 MHz at Block C and one of 10 MHz at Block D, to be reserved for bidding by small businesses, rural telephone companies, and businesses owned by minorities or women. These designated entities would thus only bid against each other.

In order to disseminate licenses to such a wide variety of applicants, the Commission's proposed set aside of Channels C and D would guarantee that small businesses, rural telephone companies and businesses owned by minorities or women would acquire licenses. Because these are not the types of businesses that attract capital readily, merely allowing them to participate in the auction process without any safeguards would not guarantee that they would receive licenses as Congress requires.

Some concern has been expressed that the Commission does not have the legal authority to set aside Channels C and D for small businesses, rural telephone companies or businesses owned by women or minorities. To the extent that these concerns are based on the statements of individual members of Congress, they are unavailing. Statutory language may not be expanded or contracted on the basis of the statements of individual legislators.<sup>13</sup>

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<sup>12</sup> Pub. L. 103-66, Title VI, 107 stat. 312.

<sup>13</sup> West Virginia University Hospitals, Inc. v. Casey, 111 S. Ct. 1138, 1147 (1991).

In any event, the legislative history as a whole supports the Commission's proposed set aside of Channels C and D. The House Bill explains that "the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas; economic opportunity for a wide variety of applicants, including small businesses...."<sup>14</sup> Moreover,

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.<sup>15</sup>

Legislative history such as this only highlights what is already apparent from the language of the statute: namely, that without a portion of the spectrum set aside for small business and rural telephone companies, the Commission cannot ensure the participation of a wide variety of applicants.

Alternative payment systems or tax certificates alone will not accomplish the goals of the statute. Small businesses and rural telephone companies might never be able to attract the kind of capital necessary to bid against the deep pockets of the large industry players if they do not have spectrum set aside for them. For the Commission to attempt to attract investors through economic incentives of some sort is too speculative to ensure compliance with the statute's directive. For the Commission to determine the

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<sup>14</sup> H. R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess.

<sup>15</sup> Id. (emphasis added).

size of tax incentives necessary to attract investors would require no small amount of speculation on the part of the Commission as to the climate of the investment market and the future interests of investors. And even if the Commission produced a package attractive to investors in small businesses or rural telephone companies, there would still be no guarantee that the requisite wide variety of applicants would be awarded licenses. At best, financial incentives make participating in an auction more attractive. But such incentives are not a means of ensuring participation in the provision of PCS.

The only way to guarantee that result is to set aside a block of spectrum, as the Commission proposes to do, and allow small businesses, rural telephone companies, and businesses owned by women or minorities to bid against each other. This will result in bidding by businesses on roughly equal footing. The likelihood of a small number of businesses always bidding for the best spectrum diminishes. Tax certificates and alternative payment systems may be designed as safeguards against the failure of these PCS providers, but they cannot by themselves ensure the participation of these same businesses.

B. The Commission's Definitions of Who Qualifies for Set-Aside Channels Should Reflect the Realities of Rural Areas and Small Businesses

The Commission requested comment on defining the various designated entities. TEC's independent local exchange carriers are small telephone companies providing service in the rural areas of this country. These local exchange carriers have all been in business for a number of years, and are in a good position to

provide PCS to their customers. They are not, however, large enough to compete with national carriers for 30 MHz in Channels A and B with any realistic hope of success.

Although too small to compete with this country's large telecommunications companies, TEC's independent local exchange carriers nonetheless recognize the need to acquire at least 30 MHz of spectrum to provide PCS on an economically sustainable basis. TEC urges the Commission to ensure that small local exchange carriers such as Bay Springs Telephone Company and Crockett Telephone Company are eligible to bid upon Channels C and D together so that they, too, may compete with 30 MHz of spectrum.

TEC proposes that the Commission define a "rural telephone company" as a telephone company whose local exchanges serve places of 10,000 or fewer persons.<sup>16</sup> Likewise, a telephone company is a small business if it has 50,000 or fewer access lines and annual revenues from regulated telecommunications operations of less than \$40 million, or fewer than 1,500 employees.

1. Rural Telephone Companies Operate  
Exchanges Serving Fewer than 10,000  
Persons

The Commission requested comment on its proposal to define "rural" for purposes of PCS bidding in the same manner as it currently defines rural in the context of cable services.<sup>17</sup> The Commission proposes to limit rural telephone companies eligible for

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<sup>16</sup> Indeed, figures of 20,000 inhabitants or more have been suggested to describe rural telephone service areas. Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781, 5854 (1992); OPASTCO Issue Paper, Cable TV, February 1992.

<sup>17</sup> NPRM, at ¶ 77.

bidding preferences to those rural companies who are now permitted to provide cable video programming in their own service areas: namely, only those rural telephone companies which provide telephone service to places of 2,500 or fewer persons.<sup>18</sup>

The Commission should not rely on what may ultimately turn out to be an inappropriate limit. The 2,500 population limit was intended originally, not solely to define rural telephone companies, but to describe those rural telephone companies small enough to merit an exemption to the general prohibition against telephone companies providing cable programming in their own service areas. In any event, the 2,500 threshold is currently under review and, if it changes, may change for good reasons but too late for the purposes of this proceeding. Section 63.58 as written should not serve to define rural telephone companies for purposes of PCS bidding.

In July 1992, the Commission proposed to raise the population threshold for purposes of providing video programming from 2,500 to 10,000 persons.<sup>19</sup> The fact that the proposed increase is under consideration is relevant to this proceeding. If the Commission stakes its definition of rural on 47 C.F.R. § 63.58, and that definition changes after the PCS lottery, the Commission will have properly determined that a "rural" area contains more than 2,500 persons, but it will have done so too late for a number of rural telephone companies to benefit from it. Accordingly, TEC requests

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<sup>18</sup> 47 C.F.R. § 63.58(a)(1).

<sup>19</sup> Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992).

that the Commission not tie its definition of what constitutes a rural telephone company to an old definition of rural, and to a definition which is, in fact, relevant more to the cable context than to the provision of PCS service.<sup>20</sup>

Additionally, the very reasons for which the Commission is considering raising the threshold from 2,500 to 10,000 persons shows that areas more populated than envisioned by Section 63.58 are, in actuality, rural areas. The fact that these areas do not have enough population to attract cable service provides evidence that a definition based on a figure of 2,500 excludes many companies that would normally be considered rural. In the cable proceeding, the Commission cited "a significant number of households with no access to" cable programming.<sup>21</sup> Indeed, the Commission projected that "many areas currently unserved are likely to remain unserved for this decade, if not indefinitely."<sup>22</sup>

Accordingly, if the 2,500 limit is not adequate for its intended purpose in the cable context, there is no reason to apply it here. If a telephone company's local exchange serves no incorporated or unincorporated places of more than 10,000 persons it is properly designated rural. Bay Springs Telephone Company,

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<sup>20</sup> The Commission should bear in mind that although it has been argued that Congress provided the Commission only limited discretion in determining which rural telephone companies qualify for the rural cable exemption, the statute governing PCS does not contain similar limitations. Accordingly, there is no need for the Commission to limit itself to the truncated definition in the current version of Section 63.58.

<sup>21</sup> Second Further Notice of Proposed Rulemaking, 7 FCC Rcd at 5856 ¶ 152.

<sup>22</sup> Id.



for example, which with almost 10,000 access lines is the largest of the TEC independents, operates several exchanges serving places with populations under two hundred persons. None of its exchanges serve populations with more than 10,000 persons. Rand McNally provides no population figures at all for three of the communities served by Bay Springs Telephone Company. It would be illogical to consider those areas as non-rural if it turned out that they contain 2,501 people when Rand McNally has determined that their population is too small or too dispersed to identify. A 10,000 person population threshold is both more accurate and more logical.

The Commission questioned whether rural telephone companies should receive preferential treatment only when bidding on a PCS license area that encompasses all or some significant portion of the rural telephone company's service area.<sup>23</sup> TEC submits that this is not necessary. In order to avoid administrative delays and inconveniences alone, this suggestion should not be adopted. Telephone service areas do not run along BTA boundaries and ascertaining the existence of a "significant" overlap would only create fertile ground for disputes and litigation. Furthermore, such a restriction would undermine the Congressional intent that the Commission adopt regulations that ensure participation in PCS by rural telephone companies. For this reason, no similar restriction is proposed for small businesses or businesses owned by females or minorities.

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<sup>23</sup> NPRM, at ¶ 77.

2. Small Telephone Companies Should be Defined in the Context of the Telecommunications Industry

The Commission proposed to define small businesses pursuant to the definition devised by the Small Business Administration ("SBA"),<sup>24</sup> on the basis of a report prepared by the Small Business Advisory Committee to the Federal Communication Commission.<sup>25</sup> According to the SBAC Report, the SBA defines a small business as one with a net worth not in excess of \$6.0 million with average net income after Federal taxes for the two preceding years not in excess of \$2.0 million.<sup>26</sup> A business may also be defined as small if it meets the size standard for the industry in which it is primarily engaged.<sup>27</sup> The SBAC Report, the Commission noted, questions whether the net worth and income size standard is appropriate for the telecommunications industry.

The Commission should rely on its own rules because the Commission's rules better reflect the telecommunications industry than do those of the SBA. For purposes of qualifying for a set-aside channel, a small business which is a telephone company should be defined as one already considered small by current Commission standards. The Commission defines small telephone companies for purposes of filing tariffs as any local exchange carrier with annual revenues from regulated telecommunications operations of

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<sup>24</sup> NPRM, at ¶ 77 n.51.

<sup>25</sup> Report of the FCC Small Business Advisory Committee to the Federal Communication Commission Regarding Gen. Docket 90-314, (Sept. 15, 1993) (subsequently referred to as SBAC Report).

<sup>26</sup> Id. at n. 51.

<sup>27</sup> Id.

less than \$40 million, and 50,000 or fewer access lines.<sup>28</sup> Bay Springs Telephone Company has on file with the Commission a small company interstate access tariff, Tariff F.C.C. No. 2. All six of the TEC independent local exchange carriers qualify as small telephone companies under current Commission rules, and TEC sees no reason to take SBA definitions designed for an aggregation of different industries nationwide and apply them in the context of the telecommunications industry.

Only the SBA's size standard for the telephone industry as defined at 13 C.F.R. § 121.601 is acceptable, and then only because it is limited to the telecommunications field. According to the SBA's Standard Industrial Classification, a telephone communications provider is considered small if it has fewer than 1,500 employees.<sup>29</sup> All six of the TEC local exchange carriers have fewer than 1,500 employees. A telephone company is small if it has fewer than 50,000 access lines or fewer than 1,500 employees.

IV. THE COMMISSION SHOULD PERMIT RURAL TELEPHONE OR SMALL BUSINESS HOLDING COMPANIES TO BID ON CHANNELS C AND D TOGETHER AND TO AGGREGATE SPECTRUM

The FCC asked whether consortia that include designated entities among their members should be eligible for preferential measures when they bid for spectrum generally, and, if they are eligible for preferences, whether they should receive the same investment incentives as would be available to other eligible designated entities.<sup>30</sup> TEC agrees with the Commission's proposal

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<sup>28</sup> 47 C.F.R. §§ 61.39(a), 69.602(a)(3).

<sup>29</sup> 13 C.F.R. § 121.601, No. 4813.

<sup>30</sup> NPRM, at ¶ 78.

to allow consortium participation in PCS, and recommends that the Commission credit consortia on the basis of their constituent members rather than on the basis of their qualifications in the aggregate.

TEC is a holding company that includes designated entities such as rural telephone companies and small telephone companies. TEC should be judged, for purposes of determining whether it may bid on Channels C and D, on the basis of its subsidiaries rather than as a whole. In other words, a group of separate small rural telephone companies such as the TEC local exchange carriers should not be viewed as adding up to a large business ineligible for bidding on the set-aside channels. The access lines, annual revenues, employees and populations served by TEC's local exchange carriers should not be aggregated when determining the eligibility of those rural telephone companies to bid on licenses for Channels C or D.

Commissioner Barrett recognized the need for group bidding in the context of bidding upon MTAs.<sup>31</sup> He stated that he would support enhancement credits for including, among others, rural telephone companies in any consortia established.<sup>32</sup> He believes that small businesses would have a better chance of surviving in a consortium, "than if they are licensed to compete only as a single, standalone BTA inside an MTA."<sup>33</sup> TEC agrees with Commissioner

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<sup>31</sup> PCS Order, (Dissenting Statement of Commissioner Andrew C. Barrett at 4).

<sup>32</sup> Id.

<sup>33</sup> Id.

Barrett that designated entities should also receive some sort of enhancement credit for bids on channel blocks other than Channels C and D. Such a regimen would increase opportunities for participation by designated entities in the economically attractive 30 MHz MTA blocks.

Smaller and rural telephone companies need to pool their resources to obtain the capital necessary to finance an economically viable block of spectrum. As part of TEC, TEC's local exchange carriers have access to greater technical and financial support, and to economies of scale not otherwise available. As part of a holding company, these small rural exchange carriers will be able to offer personal communications services to rural telephone customers sooner and more efficiently; and will be able to offer portable telecommunications on a seamless basis over a larger area.

TEC respectfully requests that the Commission allow subsidiaries held by a holding company to bid as a group on Channels C and D so long as the subsidiaries meet the Commission's definition of rural telephone companies, small businesses, or companies owned by women or minorities. Any concern that a subsidiary is no longer a small business or a rural telephone company should be disregarded. The holding company structure allows each constituent business to retain control of its own operations. Although a rural or small telephone company may be acting in concert with other telephone companies, it does not lose its rural status or cease being a small telephone company. Accordingly, the Commission should determine whether a subsidiary

bidding on the set-aside channels should receive designated entity status, not on the basis of the size or status of the holding company, but on the basis of the status of its subsidiaries.

TEC also requests that the Commission allow rural and small telephone companies the option of acting in concert to bid upon Channels C and D through a single bid for both channels, thereby aggregating the two channels. This would ensure that an applicant does not bid upon one channel in the hope of acquiring the other channel in that BTA and then find itself outbid. Thirty megahertz is necessary for economic and technical viability. In order to provide "wireline quality voice, data and digitized compressed video and images," 30 MHz is essential.<sup>34</sup> Without it, a PCS provider will be able to offer only some truncated version of these services, and will not be able to avoid microwave incumbents. Accordingly, it is necessary to allow designated entities to bid upon both Channels C and D at the same time so that they do not end up with 20 MHz, or, worse, only 10 Mhz, in which they have no interest.

A single bid is especially important in light of the Commission decision to fragment the spectrum and geographic regions available so that designated entities lack sufficient spectrum with which to work. If technically feasible, spectrum aggregation would allow designated entities to provide PCS on an economically competitive basis. For the same reasons that the Commission is

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<sup>34</sup> Letter from Omnipoint Corporation to William F. Caton, Federal Communications Commission, 3, Sept. 29, 1993.

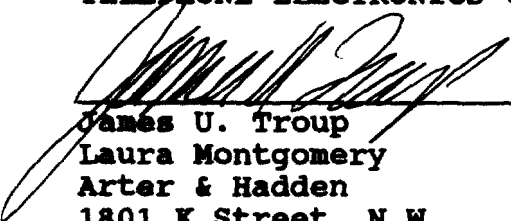
willing to consider aggregation of the 10 MHz BTA blocks, it should permit aggregation of Channels C and D into a 30 MHz block.

CONCLUSION

Telephone Electronics Corporation respectfully requests that the Commission carry out the goals of Congress to ensure participation by small and rural telephone companies in the provision of personal communications services. To that end, TEC agrees that the Commission should set aside 30 MHz of spectrum at Channels C and D for auctioning to appropriately defined designated entities.

Respectfully submitted,

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